PUBLIC HEARING
January 14, 1988

A joint Public Hearing of the Elkton Town Council and the Elkton Planning Commission was held January 14, 1988 at 7:00 P.M. in the council chambers with the Mayor Charles E. Dean presiding. The following council members were present: B. B. Holt, H. W. Leap, H. A. Leet and L. C. Life. R. E. Davis and R. L. Snow were absent. Norma Leap, Clerk and Gerald Monger, Superintendent were also present.

Mayor Dean called the Public Hearing to order.

Mayor Dean asked if there were any citizens present who wished to comment on the proposed amendments to Section 2 and 4 of the Zoning Ordinance of Elkton, Virginia. Section 2 would change the definition of boarding houses and lodging houses and add a new definition of limited bed and breakfast facilities. Section 4-A1 Residence Uses would add a new paragraph concerning limited bed and breakfast facilities. There were no comments.

Mayor Dean asked if there were any citizens present who wished to comment on the proposed ordinance amending Section 6-2-3 of the Code of Ordinances of the Town of Elkton, Virginia, by adding a new subsection permitting the combination of existing lots. There were no comments from the citizens.

Councilman Holt explained that this proposed amendment to Section 6-2-3 is a modification of the subdivision ordinance. There is some ambiguity in the way that the subdivision ordinance is written and there is also some question as to whether or not this particular action was necessary. In order to be on the safe side, council decided it was better to modify the ordinance to be sure that they can take care of this situation legally if it should arise. One of the things that arises as the result of this is that in the past when this sort of thing has happened we have always treated actions by the Planning Commission as recommendations, which they should be as the Planning Commission is not a decision making body. Before this modification goes into affect and when it is approved, if it is approved, it will include a provision that makes it quite clear that any such change would be upon recommendation from the Planning Commission and final action would be taken by the Town Council.

Mayor Dean asked for comments on the proposed abandonment of a 10 foot pedestrian easement in the Elkwood Subdivison, Section 1, along the dividing lines of Lot 66 and 67.

Mrs. Hazel Crider, Mrs. Lorna McInturff Stultz, Mr. Virgil Cook, Mr. Wayne Weaver and Mr. Stanley Crider all spoke in opposition to abandoning the 10 foot pedestrian easement. The major reasons were that they had bought and built in Elkwood for the subdivision as it is and the promise of future development. They feel the easement is an asset to the Elkwood property owners, was designed and placed in a central location to give access to the ponds and a proposed lake and should be left as is in case of future development. It was also pointed out that it is the responsibility of anyone buying in Elkwood to look up the information in the court house on the plat and its restrictions. If the prospective buyer doesn't feel he can abide by the restrictions there are other desirable properties in the Town of Elkton and Rockingham County. Mrs. Crider presented a petition signed by thirty-one (31) residents of Elkwood opposing the moving of the easement and wanting it to remain as is. A picture of the sign at the Elkwood entrance was also presented showing the advertisement of scenic, wooded and lakeside homesites. Mr. Cook stated that if there are no further plans for future development the sign should be

removed as it is false advertisement. Mrs. Crider asked if the Council and the Planning Commission are going to uphold the Elkwood Plat. She stated they would appreciate it if council would do this.

Mr. and Mrs. Randall Dean spoke in favor of abandoning the easement. He pointed out that when he sold Lot 66 to Mr. Raymond Gooden he was not aware of the easement. British Woods is now dissolved and the land is owned by Mr. Dean and Mr. Warren Denton. Mr. Dean stated that Mr. Denton would also like to see the easement abandoned. Mr. Dean stated that there are no plans to develop this land that he knows of and they plan to post "No Trepassing" signs so the easement will lead to nowhere.

Mr. Kenneth Whittington spoke in reference to the letter sent to the property owners regarding the request to abandon this easement. He stated he is not opposed, nor does he approve, the abandonment of the 10 foot pedestrian easement along the dividing lines of Lot 66 and 67. He brought to the attention of Council and the Planning Commission that if they choose not to honor the wishes of some of the property owners of the Elkwood Subdivision and the easement is abandoned and a building permit is issued to the potential purchasers of the two lots for the construction of a garage on Lot 67, Council should carefully consider that the use of these lots in the Elkwood Subdivision are regulated by a restrictive covenant of the Elkwood Subdivision, Permitted Use and Accessory Use. This situation would be Accessory Use and the proper solution to this situation would be to resubdivide the two lots and the plat be redrawn showing the two lots combined as one and properly recorded at the purchaser's expense. Most zoning ordinances, and perhaps here in Elkton, are also structured for Permitted Use and Accessory Use. In his opinion, if a building permit is issued to allow the construction of a garage, without the two lots being resubdivided and combined as one, the owner, if a garage were built, would be in violation of the restricted covenant of the Elkwood Subdivision, Section 1, dated October 14, 1975, paragraph A.

Marvin Hillsman, Attorney representing Cherl and Bill TerHaar and Raymond and Elsie Gooden, spoke in favor of abandoning the easement. He gave some background information on how this problem came about. He stated he disagreed with Mr. Whittington regarding an addition to this residence violating the portion of the Elkwood covenant that states one residence per lot. Mr. Hillsman contacted Lawyers Title Insurance Corporation, presented this question to them and they said they had absolutely no problem with it, felt it was not in violation of the covenant and would be glad to extend affirmative insurance coverage against anyone being forced to remove any portion of the building. Mr. Hillsman also disagreed with the statement made saying the covenant is involved with this easement. Covenants have nothing at all to do with the easement. He pointed out that this is a public easement, not just for Elkwood residents, but for anyone who wishes to use it. He stated that the purpose for the easement no longer exists as British Woods has dissolved, there will not be any development by British Woods of a recreational area or lake, the property behind Lots 66 and 67 is now owned by Mr. Dean and Mr. Denton and they have no plans to develop this land. For reasons of liability, Mr. Dean and Mr. Denton plan to post "No Trespassing" signs so this gives you an easement to nowhere. Mr. Hillsman felt there had been no need demonstrated for the public to have use of this easement and as the adjacent property owners would like to see it closed, he requested council vacate the easement and stated he would be willing to work out the technical language for the required ordinance with Mr. Davenport.

Mr. Charles Herring, speaking for he and his wife, stated he was not opposed to closing, reducing or moving the easement.

Mr. Bill Mosko stated that a week ago eleven families met at Joe Hammer's house and it was his understanding that they all agreed to either move the easement to the end of Lot 67 or move it on to the other end of Lot 70 which he understood Mr. Dean will donate five feet of land. Mr. Mosko stated it makes no difference to him which is done. Since then he understands a different petition has been circulated which he did not sign and does not intend to sign. He feels that if the easement does not go anywhere you should move it and his wife feels the same way. If council wishes to leave the easement and not abandon it, he is willing to have it moved down on Lot 67 or the west end of his property.

Mr. Thomas Ard, Mr. Raymond Gooden, Mr. Wallace Kratzer, Mr. and Mrs. Bill TerHaar and Mr. James Ahern all spoke in favor of abandoning the easement.

Mr. Richard Davis stated he had no problem with moving or abandoning the easement.

Council members were given the opportunity to present questions.

As there were no further citizens wishing to comment, the Public Hearing adjourned.

MAYOR: Charles E. Dean
Charles E. Dean, Mayor

RECORDER: Norma R. Leap
Norma R. Leap, Clerk